Supreme Court of the United States.

No. 174.—October Term, 1903.

John D. Boering and Mearlin G. Boering, his wife, Plaintiffs in Error, vs. Chesapeake Beach Railway Company.	In error to the Court of Appeals of the District of Columbia.

[March 21, 1904.]

Mr. Justice Brewer delivered the opinion of the Court.

This was an action brought in the Supreme Court of the District of Columbia to recover damages for personal injuries sustained by Mrs. Boering while riding in one of the coaches of the defendant, and caused, as alleged, by the negligence of the company. Her husband was joined with her as plaintiff, but no personal injury to him was alleged. The defense was that she was riding upon a free pass, which contained the following stipulation: "The person accepting and using this pass thereby assumes all risk of accident and damage to person and property, whether caused by negligence of the company's agents or otherwise." A trial before the court and a jury resulted in a verdict and judgment for the defendant, which was affirmed by the Court of Appeals of the District, (20 D. C. App. 500,) and thereupon the case was brought here on error.

The contention of the plaintiffs is that the company was liable in any event for injuries caused by its negligence to one riding on its trains; and further, that if it were not liable for such negligence to one accepting a free pass containing the stipulation quoted, it was liable to Mrs. Boering, because it did not appear that she knew or assented to the stipulation. The trial court submitted to the jury the question whether she was, in fact, a free passenger, and as the verdict was in favor of the defendant, that question of fact was settled in favor of the company. Under those circumstances the recent decision of this court in *Northern Pacific Railway Company* v. *Adams* disposes of the first contention.

With reference to the second contention, the testimony of the two plaintiffs showed that the husband had attended to securing transportation; that he obtained passes for himself and wife, and that they had traveled on these passes before; that she knew the difference between passes (she called them "cards") and tickets, for on that day her husband had pur-

chased a ticket for a friend who was traveling with them, and she had seen him use both ticket and passes. They further testified that she had not had either pass in her possession, and that her attention had not been called to the stipulation. Now, it is insisted that the exemption from liability for negligence results only from a contract therefor; that there can be no contract without knowledge of the terms thereof and assent thereto, and that she had neither knowledge of the stipulation nor assented to its terms; that therefore there was no contract between her and the company exempting it from liability for negligence. Counsel refer to several cases in which it has been held that stipulations in contracts for carriage of persons or things are not binding unless notice of those stipulations is brought home to such passenger or shipper. We do not propose in any manner to qualify or limit the decisions of this court in respect to those matters. They are not pertinent to this case. They apply when a contract for carriage and shipment is shown. When that appears it is fitting that any claim of limitation of the ordinary liabilities arising from such a contract should not be recognized unless both parties to the contract assent, and that assent is not to be presumed, but must be proved. Here there was no contract of carriage, and that fact was known to Mrs. Boering. She was simply given permission to ride in the coaches of the defendant. Accepting this privilege, she was bound to know the conditions thereof. She may not, through the intermediary of an agent, obtain a privilege—a mere license—and then plead that she did not know upon what conditions it was granted. A carrier is not bound, any more than any other owner of property who grants a privilege, to hunt the party to whom the privilege is given, and see that all the conditions attached to it are made known. The duty rests rather upon the one receiving the privilege to ascertain those conditions. In *Quimby* v. *Boston & Maine Railroad*, (150 Mass. 365,) a case of one traveling on a free pass, and in which the question of the assent of the holder of the pass was presented, the court said (p. 367):

"Having accepted the pass, he must have done so on the conditions fully expressed therein, whether he actually read them or not. (*Squire* v. *New York Central Railroad*, 98 Mass. 239; *Hill* v. *Boston, Hoosac Tunnel & Western Railroad*, 144 Mass. 284; *Boston & Maine Railroad* v. *Chipman*, 146 Mass. 107.)"

So in *Muldoon* v. *Seattle Railway Company*, (10 Wash. 311, 313):

"We think it may be fairly held that a person receiving a ticket for free transportation is bound to see and know all of the conditions printed thereon which the carrier sees fit to lawfully impose. This is an entirely different case from that where a carrier attempts to impose conditions upon a passenger for hire, which must, if unusual, be brought to his notice. In these cases of free passage, the carrier has a right to impose any conditions it sees fit as to time, trains, baggage, connections, and, as we have held,

damages for negligence; and the recipient of such favors ought at least to take the trouble to look on both sides of the paper before he attempts to use them."

See also *Griswold* v. *New York &c. Railroad Company*, (53 Conn. 371;) *Illinois Central Railroad Company* v. *Read*, (37 Ill. 484, 510.) As was well observed by Circuit Judge Putnam in *Duncan* v. *Maine Central Railroad Company*, (113 Fed. Rep. 508, 514,) in words quoted with approval by the Court of Appeals in this case:

"The result we have reached conforms the law applicable to the present issue to that moral sense which justly holds those who accept gratuities and acts of hospitality to perform the conditions on which they are granted."

We see no error in the record, and the judgment of the Court of Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.